Comments on Proposed Regulations from:

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Proposed Change #1 – The proposed regulations be withdrawn until better notification has been provided to potentially interested parties, or at least to allow an additional comment period with broader notification to interested parties after the initial revision of the proposed regulations. While information about these proposed regulations has been provided to professional adoption organizations and through some private advocacy groups, no serious attempt was made to notify all adoption agencies, facilitators, parent groups, and adoptee groups. Lists of such interested parties are easily available on the Health and Human Services National Adoption Information Clearinghouse, and such web sites as adoption.com and adoptivefamilies.com. Directly notifying likely interested parties from such lists would be an easy and straightforward means of legitimately obtaining feedback from the full spectrum of adoption advocates and participants, rather than the large adoption lobbying and power brokers who were consulted. As these regulations were almost entirely written by an Acton-Burnell committee consisting in majority of former COA employees, employees of organizations accredited by COA, and other beltway insiders this will also remove some of the existing taint of having the COA "specified in" as the only serious applicant to become an Accrediting Entity.

Proposed Change #2 – The proposed regulations be withdrawn until a study of adoptive parents has been completed to determine the nature and number of problems that exist for internationally adopting families. Families who have both completed and failed international adoptions can be located through I-600a applications. A random sampling of these families should be surveyed to determine how many had problems that would be addressed by the InterCountry Adoption Act (ICA). If only 1% of families had the kinds of problems the ICA is designed to address, then a significant downscaling of the proposed regulations would be appropriate.

Proposed Change #3 – The proposed regulations be withdrawn until a cost estimate has been completed of the financial impact the proposed regulations on individual adoptions. This estimate should show the disparate impacts on both large and small agencies. It is the opinion of Americans Adopting Orphans that the initial costs of accreditation and associated required changes will be very high, with a disproportionate increase in adoption costs for families using smaller agencies. This will inevitably lead to a decrease in the number of international adoptions. The cost increases will effectively act as a tax on the middle class, particularly for those families who are able to afford to care for a child but can find it difficult to pay for the costs of the adoption itself. Lower middle class families who do not have sufficient income to significantly benefit from the Federal Adoption Tax Credit will feel the greatest impact. The estimate for our agency is that

Accreditation costs will exceed $3,000 per adoption and will decrease applications by over 20%.

Proposed Change #4 – The proposed regulations be withdrawn until a cost/benefit analysis is performed where the number of problematic adoptions is considered with the cost of accreditation, the decrease in overall adoptions, the decrease in adoptions from licensed and accredited agencies, and the shift of adoptions to unlicensed facilitators. (The unlicensed facilitator issue will be directly addressed below.)

Proposed Change #5 – In Section 96.2 Adoption Service should be defined differently. Under the current definition unlicensed facilitators could continue to operate without falling under the jurisdiction of the proposed regulations. By unlicensed facilitators, we refer to individuals and organizations in the United States who offer to assist with the preparation of adoption paperwork, but who do not perform home studies, who arrange for families to work with specific facilitators in foreign countries, but who claim that they are not directly involved with child matching, and who charge fees for these services. It is the opinion of Americans Adopting Orphans that these practitioners are responsible for a substantial percentage of adoption complaints that the ICA was intended to address. By excluding these facilitators, the overall impact will be to increase the cost of adoption for licensed agencies, without raising the cost of adoption through the unlicensed facilitators. This will drive more families into the hands of these generally less qualified service providers. To that end, the definition of Adoption Service should be broadened.

Proposed Change #6 – In Section 96.4 the Selection, Designation, and Duties of Accrediting Entities it should be required that at least three national Accrediting Entities be named before the proposed regulations can take effect. Having a single national Accrediting Entity will place far too much power in the hands of one organization. By having different organizations competing for applications from adoption agencies, each Accrediting Entity will be subject to market forces to enhance even handed and fair application of accrediting standards. As these regulations were almost entirely written by an Acton-Burnell committee consisting in majority of former COA employees, employees of organizations accredited by COA, and other beltway insiders this will also remove some of the existing taint of having the COA "specified in" as the only serious applicant to become an Accrediting Entity.

Proposed Change #7 – In Section 96.5 it is required that any Accrediting Entity be a 501c3 or public entity. This section should be removed. There is no advantage to restricting for-profit organizations from becoming Accrediting Entities. Indeed, for-profit organizations are frequently more thorough, less expensive, and better providers of such services.

Proposed Change #8 – In Section 96.19 any agency that has applied for accreditation, but that has not been processed by an Accrediting Entity through no fault of the agency should be granted temporary accreditation until the Accrediting Entity has approved or declined the application. The initial flood of applications, particularly if there is only one

Accrediting Entity could easily result in qualified agencies being unable to obtain accreditation in a timely manner, and be forced out of business.

Proposed Change #9 – Section 96.33 b) should be changed from independent annual audits to audits every four years, or as required by state licensing. Auditing every year is an unnecessary burden, particularly to smaller adoption agencies. This requirement would add thousands of dollars in budget costs to an adoption agency each year. Simply submitting 990 tax returns should be sufficient for most years.

Proposed Change #10 – Section 96.33 e) should be removed. It is not practical for smaller adoption agencies to carry 3 months of operating budgets in cash. This is particularly true for agencies with pay-as-you-go plans, where large up front payments are not required of parents. If this requirement remains, then alternate means of fulfilling the requirement should be allowed including 3 months of operating expenses in available credit, or in anticipated fees due from client families already in the adoption process.

Proposed Change #11 – Section 96.33 g) should be removed. It is not practical for smaller adoption agencies to pay for independent risk assessments. Each agency should be responsible for determining it's own level of risk and purchasing insurance as it thinks necessary. At most there should be a reporting requirement to potential adoptive parents about the amount of insurance in place, so that the adoptive parents can determine if they wish to use an agency with a particular amount of insurance.

Proposed Change #12 – Section 96.33 h) should be removed. No insurance carrier we have been able to find even provides insurance coverage of this nature. Even if it were available, it would be extremely expensive. This is particularly true for smaller agencies. A substantial part of any insurance premium is the initial cost of the policy, regardless of the size of the agency. The cost per adoption decreases. This unfairly favors large agencies over smaller agencies. At most there should be a reporting requirement to potential adoptive parents. They are adults who can decide for themselves if the higher fees of an agency with professional liability insurance justify the added benefit. If there must be a professional liability requirement, then it should have more realistic standards. These would include NOT covering activities in a foreign country. Liability and fault would be essentially impossible to determine, and the costs, pitfalls, and limitations of attempting to obtain testimony from people or groups living outside of the United States would be daunting. Additionally, the limit of liability and required coverage should be no more than $50,000, the maximum reasonable expenses that could be incurred on an adoption. Americans Adopting Orphans believes that one of the goals of this section is to provide medical guarantees for the adoptive family. Attempting to do this is impractical, and the costs of attempting to provide such coverage will increase the cost of adoption so much, that many children will be left to languish in orphanages. All without providing meaningful benefit to adoptive parents in the United States.

Proposed Change #13 – Section 96.33 i) should be removed. This is an unnecessary expense. The number of adoptive families who would have benefited from such a

requirement in past adoptions should be determined before adding this financial burden to future adoptive families.

Proposed Change #14 – In Section 96.38 c) the requirement for 20 hours per year of specialized social worker training should be removed. Each state should determine the amount of education required to maintain the qualifications of a social worker. Having such a requirement for all social work staff, including part time employees, adds too much to the cost of adoption without providing obvious benefit. At most such a requirement should be made for full time social work staff. Language stating that the adoption agency should be responsible for ensuring that the social work staff has appropriate training and knowledge should be sufficient.

Proposed Change #15 - In Section 96.39 d) language should be added that expressly allows prospective adoptive parents to sign limited waivers of liability that can limit the liability of an agency. This will allow families to make informed decisions about the level of risk they are willing to assume in an adoption.

Proposed Change #16 – In Section 96.44 language should be added to allow accredited agencies to hire any state licensed home study provider to complete a home study pre or post placement report without having to extend full accreditation liability to that home study provider. This is particularly true for families in sparsely populated areas that may have little access to a variety of home study services. Not including this language would add a significant additional cost to many families, or effectively prohibit them from adopting internationally.

Proposed Change #17 – In Section 96.48 a) language should be removed requiring 10 hours of adoption education to all families, separate from the time spent in the home study. This will greatly add to the expense of an adoption, and is often unnecessary. This is particularly true for mult-cultural families, families who have previously adopted, or for parents who are adoptees themselves. This kind of blanket requirement takes away the ability of home study providers to determine how much education is needed by each family.

Proposed Change #18 – In Section 96.49 a) language should be included to allow for adoptions of children who have not been pre-identified in advance of travel. It is not practical for an agency to provide medical information on a child two weeks in advance of an adoption or adoption trip if the parent selects a child and can then adopt that child within a few days. This is the standard practice in many countries. Ukraine is a good example of this. Parents are approved to come to the country, and are then required to select a child from a listing of available children. Enforcing this two week requirement would add needless expense and delay to such an adoption. This also applies to parents who plan to adopt one child, and end up adopting a different child, or an additional child or children.

Proposed Change #19 – In Sections 96.49 c), e), g), i) the language "To the fullest extent practicable" should be added. It may not be possible, for example, to provide translations

of medical records into a variety of languages when the family is in the middle of an adoption in a foreign country.

Proposed Change #20 – Sections 96.59 and 96.79 should be changed to allow for administrative review of denied applications. This is particularly true for the initial implementation of these regulations. To allow an Accrediting Entity to shut down an existing licensed adoption agency with no oversight or appeal of any kind is unconscionable. Who will watch the watchers. This is particularly true when the only Accrediting Entity is likely to be the COA. Providing an effective monopoly to a single organization over the existence of every adoption agency in the United States is terrible, yet that is what is likely to happen. To provide such power with no opportunity for appeal should not be allowed to stand. Further, if an agency is denied approval, the agency should be allowed to apply with a different Accrediting Entity. Another reason for requiring that there be at least 3 before implementing the regulations. Likewise, a complaint procedure against the accrediting agency by agencies should be implemented.

Proposed Change #21 – Subpart N should be extended to any new adoption agency. Temporary Accreditation should be available to any group that wishes to form a new adoption agency. It will be virtually impossible for a small group of adoptive parents to band together to start an agency with new and innovative ideas. Yet this is how most adoption agencies got their start. To expect an agency to undergo the full rigors and expenses of accreditation in addition to state licensing requirements will probably mean the end of most agency startups. While this will work to the long term advantage of existing agencies, it will severely limit the choices that will be available to adopting families. While it is understood that a new agency can try to be supervised by an existing agency, we believe that this is quite impractical. Existing agencies will be unwilling to provide such assistance to potential competitors, or if they are willing to do so the fees they will have to charge would make the new agency non-viable. Additionally, new agency with unique approaches to adoption will probably find themselves having to adhere to the practices of the supervising agency, as the supervising agency will not want to risk their accreditation by being responsible for a new concept. Overall the diversity of adoption will diminish, and that diversity is one of the greatest parts of adoption in America.

Proposed Change #22 – NOTE – this proposed change is out of order. In Section 96.27 the regulations proposed here do not discuss the actual standards that will be used to judge the adoption agencies. Instead they state that the Accrediting Entity will get to create them, and then determine the relative importance of each standard. All of this will be done with no provision for oversight by the State Department, or for public review and comment. Before the actual accreditation process begins, these standards should be written and subjected to the same kind of review as these regulations.

Overall comments and observations:
It is the opinion of Americans Adopting Orphans that these proposed regulations are very poorly considered. The primary goals of the Hague are never properly addressed. Rather than becoming so deeply involved in the finances of an agency, and imposing standards

that really only fit large agencies, adoptions should be monitored through adoptive families. Rather than waiting for complaints, families who file I-600's or I-600a's should be randomly selected to review their adoption processes. That is how you will find the agencies, attorneys, and facilitators who are hurting families and damaging adoption. All these proposed regulations will do is increase costs, decrease adoptions, and push more families in the directions of people and organizations who already have no respect for the ethics of adoption or the rule of law.

Instead you have created a monstrosity written by insiders who are working to promote their interests above those of orphaned children or adoptive families. It is patently clear that the existing accrediting standards of the COA were largely used to create these proposed regulations. This works to the benefit of the COA and the (generally large) agencies that already have accreditation. While agencies that already have COA accreditation are not automatically given ICA accreditation (one of the few proposed rules with which we were in full agreement). Language has also been included that will delight insurance companies and trial lawyers. And all of this has been done with no apparent consideration of the overall costs of this process, or the impact it will have on adoption.

Instead of doing the hard work of going out to adoptive families, reviewing specific cases, looking for overall trends and problems, it appears to us that Acton-Burnell got a bunch of insiders together to write regulations to suit the way they want adoption and accreditation to work. No real analysis has ever been presented in conjunction with these proposed regulations to demonstrate that any serious systematic analysis of actual adoptions was done.

Likewise, little or no consideration was given to the actual costs of these proposed regulations. At the October meeting in Washington DC when State Department staff members led a public meeting, staff members stated that they had considered the cost of the regulations. On two occasions they were directly asked what the proposed regulations would cost. On the first occasion the question was ignored. On the second it was suggested that cost estimates be sent in with these comments. If they had actually considered the costs, then they should have had some idea about what the costs would be.

So here are our estimates. We think it will cost Americans Adopting Orphans at least $50,000 - $60,000 to become accredited. It will cost $25,000 - $30,000 per year to maintain accreditation. We will probably have to raise our fees to client families by $3,000 to $5,000 per adoption. We anticipate this will cause the number of applications we receive to drop by at least 20%. We also believe that agencies who currently perform 200 or more adoptions per year will only have to increase their fees by $1,500 - $3,000 per adoption.

Of course it is difficult to really know how much this will all cost, as we are unable to consider or comment on the actual standards we will have to follow. Again demonstrating how ill considered these proposals are.

Sincerely,

David B. Ptasnik,
Director